NO. 98

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

ANDREW UPSHAW, PETITIONER

v.

UNITED STATES OF AMERICA

On Writ of Certiorari to the United States Court of Appeals
For the District of Columbia

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The majority and dissenting opinions in the Court of Appeals (91-98) are reported at 168 F. 2d 167.

JURISDICTION

The judgment of the Court of Appeals was entered April 19, 1948 (R. 98-99). The petition for a writ of certiorari was filed May 17, 1948, and was granted June 14, 1948 (R. 100). The

jurisdiction of this Court rests upon 28 U. S. C. 1254. See also Rules 37(b) (2) and 45(a), F. R. Crim. P.

QUESTION PRESENTED

Petitioner made a confession approximately 30 hours after he had been arrested and prior to the time he was arraigned before a committing magistrate. During that period he was questioned occasionally by a single officer for short periods. One of the arresting officers explained that the failure to arraign petitioner on the day of the arrest was due to their desire to question him further. The question is whether the confession is admissible under *McNabb* v. *United States*, 318 U. S. 332, and *United States* v. *Mitchell*, 322 U. S. 65.

RULE INVOLVED

Rule 5(a) of the Federal Rules of Criminal Procedure provides:

> APPEARANCE BEFORE THE COMMISSIONER. An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available commissioner or before any other nearby officer empowered to commit persons charged with offenses against the laws of the United States. When a person arrested without a warrant is brought before a commissioner or other officer, a complaint shall be filed forthwith.

STATEMENT

Petitioner was convicted in the United States District Court for the District of Columbia of the larceny of a watch and he was sentenced to imprisonment for a period of 16 months to four years (R. 79, 84, 85). The watch was the property of one Mrs. Pearce and was missed by her after some workmen, among whom was petitioner, had been sent to clean the windows and floors of her home (R. 3-6).

The sole point at issue is the admissibility under the *McNabb* rule of a confession by petitioner that he had taken the watch, which had been placed in a drawer of a vanity at Mrs. Pearce's home, and had sold it to some strangers for $5 and a bottle of whiskey (Gov. Ex. 1, R. 30, 82-83). The facts on that issue, developed, mainly, at a hearing outside the presence of the jury, may be summarized as follows:

Petitioner was arrested about 2 o'clock in the morning on Friday, June 6, 1947, by Detectives Culpepper and Furr (R. 11, 18).[1] He was taken to No. 10 Precinct and questioned for not more than

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[1] After Mrs. Pearce reported the loss of the watch, police questioned the men, other than petitioner, who had been working at her home (R. 40). Petitioner was at the time confined at the Lorton Prison serving a short sentence (R. 43, 48). Culpepper left his card at petitioner's home with the request that petitioner get in touch with him when he was released, but petitioner did not do so, although he testified that he had telephoned the station house (R. 43, 48, 51-52).

half an hour (R. 12, 18).[2] About 9 o'clock that morning, he was questioned by Furr, apparently for a short time (R. 18). At 11 a. m. he was questioned briefly by Culpepper through the bars of his cell, and Culpepper again questioned him briefly through the bars at 5:30 p. m. (R. 12, 14). Between 7:30 and 8:00 p. m. he was questioned by Furr (R. 18). On all these occasions petitioner denied that he was guilty (R. 12-13, 18).

Culpepper was asked why he did not have petitioner taken before the Police Court on June 6, and he replied (R. 16):

> Because I didn't feel that we had a sufficient case against him to have the Police Court hold him, and if the Police Court did hold him we would lose the custody of him and I no longer would be able to question him.

About 9 o'clock in the morning on Saturday, June 7, petitioner was questioned by Furr and admitted his guilt. He signed a written statement at 9:30. (R. 18, see also R. 29.)[3] At 2:00 p. m.,

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[2] At that time he was coughing considerably, which interfered to some extent with the questioning. He said he had bronchial trouble (R. 14-15) and had been drinking (R. 30-31) but he was not drunk (R. 31) and did not appear to be ill (R. 15, 31). These difficulties are not referred to in connection with later interrogations and petitioner appeared to be all right when he was questioned by Culpepper about 11 o'clock that morning (R. 15).

[3] Petitioner was apparently not arraigned at that time because the case was considered to be Culpepper's, who was not then on duty (R. 39).

when Culpepper came on duty, petitioner reaffirmed his confession to him (R. 13). Culpepper testified that at this time petitioner told him he had tried to get in touch with him the night before to tell him about the case (R. 39). That evening, Culpepper took petitioner to Mrs. Pearce's home, and petitioner repeated to her his admission of the theft (R. 7-8, 15).

Petitioner was arraigned on Monday, June 9 (see R. 21, 90).

The district court ruled that petitioner's confession was admissible under the rule of *McNabb v. United States*, 318 U. S. 332, as interpreted by Chief Judge Laws of the same court in a decision in another case which was subsequently affirmed by the Court of Appeals for the District of Columbia. *Boone v. United States*, 164 F. 2d 102 (R. 20-21).[4]

On appeal, the United States Attorney confessed error, stating that although he deemed petitioner's confession to be voluntary and true, and although the interrogation was not extended or

[4] The district court also ruled that the question of voluntariness was one for the jury (R. 18-19). At the trial, petitioner testified that he confessed because he had been beaten, that his signed statement was not true, and that he merely agreed to statements which the officers made to him (R. 44-51, 55-59). This was categorically denied by the officers (R. 32-41, 42, 69-70, 73). Mrs. Pearce testified that petitioner was calm when he talked to her and offered to repay her for the watch (R. 20-23, 26-27). A physician who examined petitioner on June 12 found no bruises at that time (R. 62-64). The issue of voluntariness was left to the jury under appropriate instructions (R. 78).

coercive, he thought the confession was inadmissible under the *McNabb* rule, because petitioner's arraignment had been delayed for an unreasonable length of time for the purpose of interrogation (R. 88-91). The Court of Appeals, one judge dissenting (R. 95-98), refused to accept the confession of error, holding that since there were no aggravating circumstances in addition to the illegal detention, the confession was not inadmissible under the *McNabb* rule as later interpreted in *United States* v. *Mitchell*, 322 U. S. 65 (R. 91-95). The conviction was accordingly affirmed (R. 98-99).

SUMMARY OF ARGUMENT

The circumstances under which petitioner's confession was made bring this case about midway between the situations before this Court in *McNabb* v. *United States*, 318 U. S. 332, and *United States* v. *Mitchell*, 322 U. S. 65. In the instant case, unlike that of *Mitchell*, the delay in arraignment for the crime involved was admittedly for the purpose of questioning, but, unlike the *McNabb* case, the period of delay was not utilized to bring psychological pressure against the accused in the form of prolonged and continuous questioning. Whether a confession made in such circumstances should or should not be admitted in evidence depends upon one's conception of the basic evil at which the sanction of the *McNabb* rule is directed.

The *Mitchell* decision makes it clear that delay in arraignment, *per se*, is not enough to warrant

exclusion of a confession. Hence, the mere fact that petitioner confessed thirty hours after he was arrested does not render his confession inadmissible in evidence.

The lower courts have regarded the *McNabb* decision, as explained in the *Mitchell* case, as being directed against the use of a period of illegal detention for the application of psychological pressure—akin to third degree methods although not amounting to actual coercion—by prolonged and continuous questioning. If, as we believe, that is the correct interpretation of the *McNabb* rule, the confession here is clearly admissible. Petitioner was questioned only intermittently for short periods during the time he was held, and the questioning was not coercive in any degree. None of the oppressive circumstances present in the *McNabb* case, which were emphasized by this Court in the *Mitchell* case as the basis for the *McNabb* decision, were present in this case. There were no groups of officers, no protracted questioning, no real pressure. If the use of methods akin to the third degree is the real evil at which this Court was striking in the *McNabb* case, there is no reason to exclude the confession in this case; there was nothing akin to such methods here.

The confession here can be deemed inadmissible only if the Court considers that delay in arraignment for the purpose of questioning in itself constitutes such wrongdoing on the part of police as to require the outlawing of a voluntary confession

on that ground alone. We do not believe that the Court intended to go so far. Almost all students of the problems of investigation and detention agree that some questioning of persons accused of crime is necessary and desirable under our system of law enforcement. While the crime here involved is a petty one, the principle adjudged in this case will be as applicable to murder as to petty larceny. Here a person, reasonably believed to be implicated in a crime, who had been asked to appear and not done so, was held for questioning, but he was questioned by a single officer for short periods under circumstances which were not oppressive in any way. We do not believe that such conduct can be deemed so far beyond the bounds of sturdy law enforcement as to require the exclusion of a confession which was manifestly voluntary, and thus to assure that a person clearly shown to be guilty should go free.

ARGUMENT

SINCE THE PERIOD OF DELAY IN ARRAIGNMENT WAS NOT UTILIZED TO BRING PSYCHOLOGICAL PRESSURE AGAINST PETITIONER BY PROLONGED AND CONTINUOUS QUESTIONING, PETITIONER'S VOLUNTARY CONFESSION WAS PROPERLY ADMITTED IN EVIDENCE

The problem presented by this case is far more important than the petty crime out of which it arises. The problem here is the extent to which the Court will, under its power to formulate rules

of evidence, undertake to regulate the questioning of suspected persons by law enforcement officers.

The problem is not new. The discrepancy between the policy of the statutes, federal and state, requiring prompt arraignment of arrested persons, and the actual practice in most jurisdictions whereby suspected persons were held and questioned, sometimes for long periods, was the subject of considerable study and comment for years prior to the decision of this Court in *McNabb v. United States*, 318 U. S. 332. See, for example, *Report of the National Commission on Law Observance and Enforcement*, Report on Lawlessness in Law Enforcement; Warner, *The Uniform Arrest Act*, 28 Va. L. Rev. 315, 317-324; Hall, *Law of Arrest in Relation to Social Problems*, 3 U. of Chic. L. Rev. 345, 356-357; Fraenkel, *From Suspicion to Accusation*, 51 Yale L. J. 748, 753-758. While the practice of delayed arraignment was almost universally condemned as imposing hardships on defendants and as opening up opportunities for use of the third degree, it was also generally agreed that some questioning of arrested persons was both necessary and desirable. For a verifiable explanation of the suspicious conduct might be the result, with the ensuing benefit to the suspect of immediate exoneration. Thus, the Commission on Law Observance stated, "Few of our informants wish to deprive the police of the power to question persons under arrest." *Op. cit.* at p. 174. The Commis-

sion itself recommended, as probably the best remedy, regulation of the questioning of arrested persons by providing for interrogation before a magistrate. *Op. cit.* p. 5. The formulators of the Uniform Arrest Act suggested that the problem be met by providing for detention not amounting to arrest for a period not exceeding two hours, for arraignment within 24 hours after arrest, and for the holding of a suspect for an additional period of 48 hours, if a judge so ordered for good cause shown. Warner, *The Uniform Arrest Act*, 28 Va. L. Rev. 315, 339-342, 344, 347. No federal legislation resulted from these investigations, possibly because it was generally agreed that the use of the third degree was not prevalent in federal law enforcement. See Report of the National Commission, *op. cit.* p. 4.

In 1943, however, this Court, in the exercise of its power to formulate rules of evidence for the federal courts, laid down the policy of excluding a confession obtained by prolonged and continuous questioning during a period of illegal detention. *McNabb* v. *United States*, 318 U. S. 332; *Anderson* v. *United States*, 318 U. S. 350.

Those decisions touched off anew discussion of the problem of where to draw the line between proper safeguards for the rights of individuals and the legitimate need, in the interests of the community's security, for law enforcement officers to question persons suspected of implication in crime.

One aspect of the discussion centered about proposed Rule 5 of the Federal Rules of Criminal Procedure, which were in the process of formulation when the *McNabb* and *Anderson* decisions were handed down. Proposed Rule 5(a) provided for arraignment after arrest "without unnecessary delay," and paragraph (b) provided:

> No statement made by a defendant in response to interrogation by an officer or agent of the government shall be admissible in evidence against him if the interrogation occurs while the defendant is held in custody in violation of this rule. [Federal Rules of Criminal Procedure, Preliminary Draft, pp. 11-16.][5]

The proposal embodied in paragraph (b) evoked considerable protest from members of the bench and bar, and from law enforcement officers. See Waite, *Police Regulation by Rules of Evidence*, 42 Mich. L. Rev. 679, 689-693; Dession, *New Rules of Criminal Procedure*, 55 Yale L. J. 694, 706-714. Law enforcement officers generally protested against any use of the exclusionary device. See Waite, *op. cit.* But even those who approved the

[5] The Advisory Committee had rejected a proposal by Professor Waite for interrogation of suspected persons at the time of preliminary hearing on the ground that such procedure might violate the privilege against self-incrimination and on the further grounds that commissioners often were neither properly trained nor have the facilities or time to conduct such investigations. See Federal Rules of Criminal Procedure, Preliminary Draft, pp. 248-250, 253-254.

exclusion of confessions as an effective sanction against unnecessary illegal detention felt that the proposed rule was too rigid, and that rules of evidence should more properly be evolved by judicial decision, on a case to case basis, in the light of experience in particular factual situations. For an expression of this point of view, see Berge, *The Proposed Federal Rules of Criminal Procedure*, 42 Mich. L. Rev. 353, 357-359. Rule 5(b), as proposed, was omitted from the Second Preliminary Draft of the Rules of Criminal Procedure and from the Rules as promulgated.

Similarly, while Congress has given consideration to the problem of investigation and detention, no solution has as yet been crystallized in legislation. In 1943, shortly after the *McNabb* decision, a bill was introduced in the House of Representatives by Congressman Hobbs, providing "That no failure to observe the requirement of law as to the time within which a person under arrest must be brought before a magistrate, commissioner, or court shall render inadmissible any evidence that is otherwise admissible." H. R. 3690, 78th Cong., 1st sess. Extensive hearings were conducted on that bill. Hearings before Subcommittee No. 2 of the Committee on the Judiciary, House of Representatives, 78th Cong., 1st sess. Law enforcement officers of the District of Columbia favored the proposed measure, arguing that the *McNabb* rule gave them insufficient time to conduct proper investigations, and pointing out

that in the District of Columbia, after arraignment and commitment, control over the prisoner passes from the local police to the United States Marshal, with resulting restrictions upon the investigatory process. Hearings, *supra*, pp. 1-10, 43-61. Attorney General Biddle pointed out that there were instances in which delay in arraignment was absolutely necessary in order not to forewarn confederates, citing the case of the saboteurs, the last of whom was arrested eight or nine days after the first. He favored, as one approach to the problem, more flexibility in the arraignment statutes, rather than the abolition of the sanction of the *McNabb* rule. Hearings, *supra*, pp. 35-41. Opponents of the bill took the view that the *McNabb* rule was the only effective means of assuring prompt preliminary hearings of arrested persons. Hearings, *supra*, pp. 61-63, 75-107. In a "Statement by the Committee on the Bill of Rights of the American Bar Association" on the Hobbs Bill, containing a careful and thorough review of the questions involved, the Committee disapproved the bill, but urged broad consideration of the whole problem of detention and investigation. The Committee recognized that there was real need for the questioning of suspected persons and urged that consideration be given to regulation of questioning. Statement, *supra*, pp. 28-34, 48-50. It also suggested that consideration be given to sanctions other than that of rigid judicial exclusion. Statement, *supra*, pp. 41-45.

The Judiciary Committee of the House recommended passage of the Hobbs Bill as a temporary expedient, pending a thorough study of the problem. H. Rep. No. 1509, 78th Cong., 2d sess. The bill passed the House but was not acted on in the Senate. 90 Cong. Rec. 9376. At the next session, the bill again passed the House with a proviso to the effect that unreasonable detention should be deemed *prima facie* evidence of the involuntariness of a confession. H. Rep. No. 245, 79th Cong., 1st sess.; 91 Cong. Rec. 2508. This proviso was stricken from the bill as reported by the Senate Committee (S. Rep. No. 1857, 79th Cong., 2d sess.), but the bill was passed over without having been brought to a vote. 92 Cong. Rec. 10380. The bill in its original form was again passed by the House the following year (93 Cong. Rec. 1392; H. Rep. No. 29, 80th Cong., 1st sess.) but was not acted on in the Senate.

Whether from inability to agree on the most desirable solution, or from a conviction that the problem can more properly be handled by the courts on a case to case basis, the fact is that, although Congress is thus aware that the problem of detention and investigation is one for which many students have recommended legislative remedies,[6] it has thus far taken no action. Thus it

[6] For other discussions of the problem of investigation and detention, see *Illegal Detention and Admissibility of Confessions*, 53 Yale L. J. 758; McCormick, *Some Problems and De-*

has been left to the courts to determine how far they will use their power to exclude evidence to regulate the questioning of arrested persons by law enforcement officers.

Two principles have already been established by the decisions of this Court. The *McNabb* and *Anderson* decisions make it clear that where a period of illegal detention is used to bring psychological pressure against an accused by prolonged and continuous questioning, a confession obtained under such oppressive circumstances, whether voluntary or not, will be excluded. On the other hand, where illegal detention has no causal relationship to a confession, as in the situation where the illegal detention merely follows a confession voluntarily made at the time of arrest, the confession is admissible. *United States* v. *Mitchell*, 322 U. S. 65.

The situation involved in the instant case lies about midway between these two criteria, a circumstance which undoubtedly accounts for the differences of opinion in the court below. In the in-

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velopments in the Admissibility of Confessions, 24 Tex. L. Rev. 239, 270-278; *Admissibility of Illegally Obtained Confessions in Federal Courts*, [1945] Wis. L. Rev. 105; *The McNabb Rule Transformed*, 47 Col. L. Rev. 1214; Dorskind, *The Effect of the Hobbs Bill on Self-Incrimination and Confessions*, 32 Cornell L. Q. 594. The problem of arrest and investigation has recently been the subject of study and recommendation by the Civil Rights Committee of the District of Columbia Bar Association. See 15 Journal of Bar Ass'n of the D. C. 104, 331. On September 14, 1948, the Association voted to recommit the cited reports to the committee.

stant case, unlike the *Mitchell* case, the delay in arraignment was admittedly for the purpose of questioning, but, unlike the *McNabb* case, the period of delay was not utilized to bring psychological pressure against petitioner in the form of prolonged and continuous questioning. Whether a confession made in such circumstances should or should not be admissible in evidence depends, therefore, upon one's conception of the basic evil at which the sanction of the *McNabb* rule is directed.

Before the *Mitchell* decision, some lower courts had assumed that delay in arraignment *per se* was the wrongdoing to which the sanction of the *McNabb* rule applied. See the opinion of the court below in the *Mitchell* case, 138 F. 2d 426; see also *United States* v. *Hoffman*, 137 F. 2d 416, 420-421 (C. C. A. 2). The *Mitchell* decision of this Court made it clear that that interpretation of the *McNabb* rule was incorrect; that mere delay in arraignment, when the delay has no causal relation to a confession, is not sufficient to justify the exclusion of a voluntary admission of guilt. The Court said in that case, 322 U. S. at 70-71:

> Our duty in shaping rules of evidence relates to the propriety of admitting evidence. This power is not to be used as an indirect mode of disciplining misconduct.

As Attorney General Biddle pointed out in his testimony on the Hobbs Bill, *supra*, p. 13, situa-

tions do arise in which delay in arraignment is absolutely essential to proper law enforcement. Where delay is not motivated by a desire to question the suspect and is not used for that purpose, then the fact that the suspect makes a confession during the period of delay ought not to require exclusion of the confession. Such a situation was before the Court of Appeals for the District of Columbia in *Wheeler* v. *United States*, 165 F. 2d 225, certiorari denied, 333 U. S. 829-830. There the police had information leading them to believe that one of the defendants, Patton, was implicated in a murder committed in the course of a robbery, but their information could not be definitely confirmed until he was identified by the persons whom he had held at the point of a gun. The identifying witnesses were out of town when Patton was arrested, and his arraignment was delayed pending such identification. In the meantime, he made incriminating statements. See Memorandum for the United States, Nos. 300, 327 Misc., Oct. T. 1947, pp. 7-8. The Court of Appeals held that the statements were admissible, and we believe correctly so, for, although the confession was made after the time when the defendant would normally have been arraigned, the delay in arraignment did not cause the confession. Without a causal connection between the delay in arraignment and the confession, a confession should not be excluded, even though it may have been made after the lapse of a reasonable time following the

arrest. Hence, the mere fact that petitioner confessed thirty hours after he was arrested is not a reason to exclude the confession in the instant case.

In the *Mitchell* case, this Court explained the *McNabb* decision as follows (322 U. S. at 67):

> Inexcusable detention for the purpose of illegally extracting evidence from an accused, and the successful extraction of such inculpatory statements by continuous questioning for many hours under psychological pressure, were the decisive features in the *McNabb* case which led us to rule that a conviction on such evidence could not stand.

On the basis of this sentence, the court below has taken the view, articulated in several decisions by that court, that the real evil at which the *McNabb* decision was directed is the use of a period of illegal detention for the application of psychological pressure—akin to third degree methods although not amounting to actual coercion—by prolonged and continuous questioning. Thus, in *Akowskey* v. *United States*, 158 F. 2d 649 (App. D. C.), although the period of detention was much shorter than that involved here, and *per se* might not be deemed unreasonable, the court below held a confession inadmissible because the accused had been questioned continuously for a period of seven hours. In the absence of such aggravating circumstances, that court has held that confessions are

admissible even though made during a period of delayed arraignment. *Boone* v. *United States*, 164 F. 2d 102 (App. D. C.); *Alderman* v. *United States*, 165 F. 2d 622 (App. D. C.).[7] Psychological pressure, rather than delay, is regarded as the kind of wrongdoing which will justify application of the extraordinary sanction of excluding competent evidence.

If, as we believe, this is the true scope of the *McNabb* rule, then the confession in the present case was clearly admissible. Petitioner was questioned only intermittently for short periods during the time he was held, and the questioning was neither coercive nor oppressive in any degree. Although petitioner asserted that his confession was coerced, the officers' categorical denials convinced the jury that it was not—and those denials are convincing on the record. The complete candor of the officers' testimony is reflected by their open

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[7] Questions regarding the interpretation of the *McNabb* and *Mitchell* decisions have been largely confined to the District of Columbia. Except for cases immediately following the *McNabb* decision, where the confessions were obtained before that decision was announced (see cases cited in *United States* v. *Mitchell*, 322 U. S. at 68), there are few decisions in other circuits dealing with the *McNabb* rule, and none of them involve the problem here presented. In so far as other courts articulate at all their concept of the *McNabb* decision as interpreted in the *Mitchell* case, they lean strongly in the direction of the majority opinion in the court below. *United States* v. *Ebeling*, 146 F. 2d 254, 256 (C. C. A. 2); *Ruhl* v. *United States*, 148 F. 2d 173, 175-176 (C. C. A. 10); *Brady* v. *United States*, 148 F. 2d 394 (C. C. A. 9); *Chevillard* v. *United States*, 155 F. 2d 929, 935-936 (C. C. A. 9).

and frank admission of their purpose in holding petitioner. The voluntary character of petitioner's confession is confirmed by Mrs. Pearce's testimony that he was calm when he repeated the circumstances of the theft to her, and that he offered to repay her for the stolen watch. (R. 22-23, 26-27). None of the oppressive circumstances present in the *McNabb* case, which were emphasized by this Court in the *Mitchell* decision, were present here: there were no groups of officers questioning the accused person in relays, no protracted questioning by any one, no aspect of psychological pressure. If, as we believe, the real evil at which the *McNabb* rule is directed was the use of methods akin to the third degree, then assuredly there is no reason to exclude the confession here involved, because no such methods or practices were employed here.

The present confession would be inadmissible only if the view prevails that a delay in arraignment for the purpose of questioning constitutes in and of itself such wrongdoing on the part of the police as to require the outlawing of a voluntary confession on that ground alone. We do not believe that the *McNabb* rule requires any such result, and certainly it should not now be extended so far. As we have indicated above, almost all who have studied the problem agree that some questioning of persons accused of crime is both necessary and desirable under our system of law enforce-

ment.[*] True, the crime here involved is a petty one, but the principle that will now be adjudged will be as applicable to murder and kidnapping as to larceny of a watch. This case, it must be emphasized, involves a situation where, out of four possible suspects, three had been eliminated on preliminary investigation, and only the fourth, who had been asked to appear and had not done so, was held for questioning; it is a case, moreover, in which the questioning was conducted by a single officer for short periods under circumstances which were not oppressive in any way. Such conduct does not so far overstep the bounds of sturdy law enforcement as to require the exclusion of a confession which was manifestly voluntary.

This Court had occasion to say in *Nardone* v. *United States*, 308 U. S. 338, 340, that——

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[*] In this connection, it is interesting to note the comment in R. M. Jackson, *The Machinery of Justice in England* (1940), p. 141:

"It is doubtful whether the police could do their work efficiently if they did not develop practices for which there is no legal authority. For instance, when the police are enquiring into a case, they have no power to compel anyone to give them information; a witness may be compelled to attend a *trial* and there give evidence, but before proceedings are actually brought he can refuse to say a word. This is so inconvenient that police officers get their way by bluff or threats. If the police are to respect the law it will be necessary to redefine and probably enlarge their powers, but such a step would be fatal to the liberties of the ordinary citizen unless it were accompanied by a satisfactory method of challenging police actions. • • •"

For a discussion of English practice, see 53 Yale L. J. 758, 767-769.

> Any claim for the exclusion of evidence logically relevant in criminal prosecutions is heavily handicapped. It must be justified by an over-riding public policy expressed in the Constitution or the law of the land.

The circumstances under which petitioner's confession was made are not so oppressive as to contravene any overriding public policy. On the contrary, insofar as the situation involves a balancing of interests, the community's interest in pursuing and punishing crime perceptibly outweighs the interest of the voluntarily confessed criminal in escaping punishment. There is thus no reason to reject truthful and relevant evidence with the result that a person clearly guilty should go free.

CONCLUSION

The judgment below is correct and should be affirmed.

Respectfully submitted,

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